APPENDIX B

Copies of State and Regional Board Policies Which Are Used In Basin Plan Implementation

State Board Policies

Regional Board Policies

STATE WATER RESOURCES CONTROL BOARD
RESOLUTION NO. 88- 63

ADOPTION OF POLICY ENTITLED
"SOURCES OF DRINKING WATER"

WHEREAS:

1. California Water Code Section 13140 provides that the State Board shall formulate and adopt State Policy for Water Quality Control; and,

2. California Water Code Section 13240 provides that Water Quality Control Plans "shall conform" to any State Policy for Water Quality Control; and,

3. The Regional Boards can conform the Water Quality Control Plans to this policy by amending the plans to incorporate the policy; and,

4. The State Board must approve any conforming amendments pursuant to Water Code Section 13245; and,

5. "Sources of drinking water" shall be defined in Water Quality Control Plans as those water bodies with beneficial uses designated as suitable, or potentially suitable, for municipal or domestic water supply (MUN); and,

6. The Water Quality Control Plans do not provide sufficient detail in the description of water bodies designated MUN to judge clearly what is, or is not, a source of drinking water for various purposes.

THEREFORE BE IT RESOLVED:

All surface and ground waters of the State are considered to be suitable, or potentially suitable, for municipal or domestic water supply and should be so designated by the Regional Boards[1] with the exception of:

/

1. <u>Surface and ground waters where:</u>

   a. The total dissolved solids (TDS) exceed 3,000 mg/L (5,000 uS/cm, electrical conductivity) and it is not reasonably expected by Regional Boards to supply a public water system, or

b. There is contamination, either by natural processes or by human activity (unrelated to a specific pollution incident), that cannot reasonably be treated for domestic use using either Best Management Practices or best economically achievable treatment practices, or

c. The water source does not provide sufficient water to supply a single well capable of producing an average, sustained yield of 200 gallons per day.

2. Surface waters where:

a. The water is in systems designed or modified to collect or treat municipal or industrial wastewaters, process waters, mining wastewaters, or storm water runoff, provided that the discharge from such systems is monitored to assure compliance with all relevant water quality objectives as required by the Regional Boards; or,

b. The water is in systems designed or modified for the primary purpose of conveying or holding agricultural drainage waters, provided that the discharge from such systems is monitored to assure compliance with all relevant water quality objectives as required by the Regional Boards.

3. Ground water where:

The aquifer is regulated as a geothermal energy producing source or has been exempted administratively pursuant to 40 Code of Federal Regulations, Section 146.4 for the purpose of underground injection of fluids associated with the production of hydrocarbon or geothermal energy, provided that these fluids do not constitute a hazardous waste under 40 CFR, Section 261.3.

4. Regional Board Authority to Amend Use Designations:

Any body of water which has a current specific designation previously assigned to it by a Regional Board in Water Quality Control Plans may retain that designation at the Regional Board's discretion. Where a body of water is not currently designated as MUN but, in the opinion of a Regional Board, is presently or potentially suitable for MUN, the Regional Board shall include MUN in the beneficial use designation.

The Regional Boards shall also assure that the beneficial uses of municipal and domestic supply are designated for protection wherever those uses are presently being attained, and assure that any changes in beneficial use designations for waters of the State are consistent with all applicable regulations adopted by the Environmental Protection Agency.

The Regional Boards shall review and revise the Water Quality Control Plans to incorporate this policy.

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1 This policy does not affect any determination of what is a potential source of drinking water for the limited purposes of maintaining a surface impoundment after June 30, 1988, pursuant to Section 25208.4 of the Health and Safety Code.

CERTIFICATION

The undersigned, Administrative Assistant to the Board, does hereby certify that the foregoing is a full, true, and correct copy of a policy duly and regularly adopted at a meeting of the State Water Resources Control Board held on May 19, 1988.

Maureen Marche'
Administrative Assistant to the Board

STATE WATER RESOURCES CONTROL BOARD
RESOLUTION NO. 89-32

CONDITIONAL CERTIFICATION OF THE TAHOE REGIONAL PLANNING AGENCY REVISED WATER QUALITY MANAGEMENT PLAN FOR THE LAKE TAHOE REGION

WHEREAS:

1. Lake Tahoe has been designated as an Outstanding National Resource Water and is undergoing a continuing trend toward increased levels of primary productivity and decreased water clarity. Deterioration of the Lake's quality is related to nonpoint pollution sources and is in violation of State and federal water quality standards. Water quality in the tributary lakes and streams is being impacted by sediment and nutrient loading linked to development in the Lake Tahoe Basin, and

2. Lake Tahoe is located in both the States of California and Nevada, and responsibility for its protection is jointly shared by those states and the bi-State Tahoe Regional Planning Agency (TRPA). The States have designated TRPA as the water quality management agency for the Lake Tahoe Region under Section 208 of the federal Clean Water Act, and

3. The California Regional Water Quality Control Board, Lahontan Region (Lahontan Regional Board) adopted the Water Quality Control Plan for the North Lahontan Basin (Basin Plan) in 1975, and

4. The State Water Resources Control Board (State Board) adopted its Lake Tahoe Basin Water Quality Plan in 1980 (amended 1983), and

5. TRPA adopted its bi-State Lake Tahoe Basin Water Quality Management (208) Plan in 1981, which incorporated many portions of the State Board's 1980 Plan. The 1981 TRPA 208 Plan was conditionally certified by the State Board and conditionally approved by the U.S. Environmental Protection Agency (EPA), and

6. On November 30, 1988, TRPA adopted a revised 208 Plan in order to allow for implementation of its comprehensive 1987 Regional Plan, and

7. TRPA has submitted the revised 208 Plan to the State Board with a request for certification of the Plan, and

8. State Board staff has reviewed the revised 208 Plan and has concerns about the Plan's adequacy to provide a level of water quality protection equal to or better than the existing TRPA 208 Plan, as previously expressed to TRPA and described in Attachment 1.

THEREFORE, BE IT RESOLVED:

That the State Board:

1. Certifies the revised 208 Plan entitled "Water Quality Management Plan for the Lake Tahoe Region", with the conditions listed in Attachment 2 to this resolution.

2. Directs the State Board and Lahontan Regional Board staffs to work with TRPA to develop and submit interim amendments to the State Board for updating the Lake Tahoe Basin Water Quality Plan, allowing use of the Individual Parcel Evaluation System (IPES), capital improvements, and coverage transfer programs; incorporating the revised Best Management Practices handbook (Volume 2 of the revised 208 Plan); revising criteria for identification of Stream Environment Zones (SEZ); and revising restrictions on encroachment and vegetation alterations in SEZ, consistent with the revised 208 Plan, no later than July 1989.

3. Directs Lahontan Regional Board staff, with the assistance of State Board staff, to work with TRPA to comprehensively review the revised 208 Plan, the Lake Tahoe Basin Water Quality Plan, and the North Lahontan Basin Water Quality Control Plan and prepare amendments to the North Lahontan Basin Water Quality Control Plan, containing all appropriate water quality control measures of the Lake Tahoe Basin Water Quality Plan and the revised 208 Plan. The amendments should be prepared and circulated as soon as possible, so that the Lahontan Regional Board can adopt the amendments no later than December 1989.

4. Will consider the rescission of the Lake Tahoe Basin Water Quality Plan immediately upon State Board approval of the North Lahontan Basin Water Quality Control Plan, as amended, provided that the North Lahontan Basin Water Quality Control Plan addresses all inconsistencies with the revised 208 Plan and incorporates all appropriate portions of the State Board's Lake Tahoe Basin Water Quality Plan.

5. Authorizes the Executive Director to submit the revised 208 Plan and the State Board Resolution, conditionally certifying the revised 208 Plan to EPA with a request for approval, as conditioned.

6. Will periodically evaluate the performance of TRPA as the designated 208 planning agency for the Lake Tahoe Basin, the adequacy of the revised 208 Plan, and its implementation in accordance with the terms contained in the revised 208 Plan and the State Board's conditions on its certification.

CERTIFICATION

The undersigned, Administrative Assistant to the Board, does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Resources Control Board held on April 20, 1989.

Maureen Marché
Administrative Assistant to the Board

SUMMARY OF STAFF CONCERNS WITH THE TAHOE REGIONAL PLANNING AGENCY WATER QUALITY MANAGEMENT PLAN FOR THE LAKE TAHOE REGION

State Water Resources Control Board (State Board) staff has reviewed the revised Tahoe Regional Planning Agency (TRPA) 208 Plan (Plan) and has provided comments to TRPA on the 208 Plan in writing and at several meetings and working group sessions. Many of staff's concerns have been resolved through TRPA revisions to the Plan, but several basic concerns still remain. (Staff is not requesting resolution of various other outstanding, but less significant issues.)

The revised 208 Plan takes a different approach toward protecting water quality in the Lake Tahoe Region than does the existing certified 208 Plan. The existing 208 Plan is based on the State Board's Lake Tahoe Basin Water Quality Plan and contains prohibitions against discharges of pollutants (i.e., sediments and nutrients) from development (land use) activities. The revised 208 Plan, which TRPA is requesting the State Board to certify, would allow for development to occur (including development on environmentally sensitive land parcels) without applying a prohibition against discharges from those areas or parcels of land being developed. The revised 208 Plan is based on the comprehensive TRPA Lake Tahoe Regional Plan (adopted by TRPA in 1987), and is designed to mitigate development-related water quality impacts through a variety of mitigation programs. Staff concerns center on the adequacy and implementation of the mitigation programs in the revised 208 Plan. The mitigation programs of the revised 208 Plan of primary concern are the Capital Improvements Program (CIP), the stream environment zone (SEZ) restoration program, the application of best management practices (BMPs), and the monitoring program for measuring progress toward attainment of water quality and other standards (called "Environmental Thresholds") cited in the revised 208 Plan. Staff concerns with these mitigation programs can be summarized as follows:

1. Capital Improvements Program (CIP): The CIP is scheduled to spend approximately $270 million (1988 dollars) in order to provide the needed level of water quality mitigation during the 20-year life of the revised 208 Plan. The CIP consists of numerous projects for correcting existing road-related erosion problems in the Lake Tahoe Region. The mitigation provided by the CIP is being relied upon by TRPA to offset existing and future development-related water quality impacts. The projected annual cost of the CIP in the immediate future is $13.5 million; however, less than half

of that amount ($6 million) has been identified by TRPA in the revised 208 Plan. TRPA has not determined where the remaining necessary funding will come from in the immediate future, nor have they identified the source of funding for the projects during the 20-year lifetime of the revised 208 Plan.

2. Stream Environment Zone (SEZ) Restoration Program: The SEZ restoration program calls for the restoration of 25 percent of the SEZ lands in urban areas and 100 percent of the SEZs in the natural areas of the Region. As with the CIP, these levels of restoration are required in order to provide adequate mitigation to offset projected water quality impacts from existing and future development in the Region. TRPA has not established the required funding levels needed to meet the SEZ restoration goals, and has not identified the source(s) of required funding. At present, the SEZ restoration program is incomplete and unrefined; however, its mitigation value is necessary and is presumed by the revised 208 Plan.

3. Best Management Practices (BMPs): The revised 208 Plan relies on the implementation of BMPs for existing development ("retrofitting"), as well as for future development. TRPA has stated that 98 percent of all development in the Region has already occurred and is in place. The State Board's 1981 conditional certification of the existing 208 Plan required TRPA to develop a regulatory program for retrofitting BMPs on existing development; however, TRPA, to a significant extent, has relied on a voluntary program. In TRPA's revised 208 Plan, projects approved by TRPA are required to retrofit BMPs on the entire parcel as a condition of approval. Although acknowledging that the existing voluntary portion of the BMP program has been unsuccessful, the revised 208 Plan relies on voluntary retrofitting of BMPs on parcels which have already been developed and for which no TRPA-permitted activity is undertaken.

   In response to comments on the revised 208 Plan criticizing the lack of a regulatory program, TRPA included provisions in its final program directing the Lahontan Regional Board and the Nevada Division of Environmental Protection to continue their regulatory programs for urban drainage problems. The final revised 208 Plan also encourages the two state agencies to issue waste discharge requirements or National Pollutant Discharge Elimination System permits for large parking lots, the South Tahoe Airport, golf courses, and ski areas.

4. Monitoring Program: The TRPA monitoring program is essential to determining if adequate progress is being made by the revised 208 Plan's programs toward meeting its Environmental Thresholds (including water quality

standards). The revised 208 Plan's monitoring program is designed to gather data on several water quality and air quality parameters, amounts of soil and SEZ disturbances, SEZ restoration, CIP project implementation, application and maintenance of BMPs, number of parcels developed, and other programs in the revised 208 Plan that must be evaluated for adequate progress. In order for the Individual Parcel Evaluation System (IPES) "line" (i.e., the minimum IPES score which would allow a parcel to be built upon) to move under the revised 208 Plan, it requires that a water quality monitoring program must be "in place and shall establish baseline water quality conditions". Water quality monitoring results and how they will be used (in determining if further development in the Region is to proceed) is not satisfactorily addressed. The establishment of a water quality monitoring program and baseline conditions are not sufficient criteria for allowing further development. If monitoring data is inadequate for assessing the cumulative water quality impacts of the revised 208 Plan, further development should be suspended. TRPA estimates that 30 to 40 additional monitoring stations will be needed for the water quality monitoring program, and funding sources for these additional stations are not addressed in the revised 208 Plan.

TRPA is required to prepare annual and five-year reports for use in assessing the revised 208 Plan's progress in meeting its required thresholds and interim targets. Using the results of the monitoring program, TRPA will attempt to decide if (and how much) further development can occur, while maintaining adequate progress toward attainment of the thresholds and interim targets.

The recommended conditions attached to the draft Resolution are designed to require TRPA to report back to the State Board (through annual and five-year reports) on progress in financing and implementing the revised 208 Plan (i.e., CIP, SEZ restoration, BMPs, and monitoring programs) and in meeting the revised 208 Plan's required thresholds and interim targets. These reports will provide the State Board with the opportunity to determine if adequate progress is being made toward attainment of State Water Quality Standards before additional discharges are allowed due to development on progressively more sensitive land parcels in the Lake Tahoe Region.

CONDITIONS OF CERTIFICATION OF THE TAHOE REGIONAL PLANNING AGENCY REVISED WATER QUALITY MANAGEMENT PLAN FOR THE LAKE TAHOE REGION

I. The Tahoe Regional Planning Agency (TRPA) will develop a financial plan for the revised 208 Plan's key mitigation programs, which the revised 208 Plan relies on for mitigation of the water quality impacts of further development in the Lake Tahoe Region. The financial plan will identify responsible agencies, projected costs and staffing requirements (both short-term and for the revised 208 Plan's 20-year lifetime), and funding sources. The financial plan will identify actions to be taken by TRPA to secure adequate funds for the program. The financial plan will also identify contingency measures which will be taken if adequate funds are not acquired for each program. The key mitigation programs to be addressed are:

A. Capital Improvement Programs (CIP).
B. Stream Environment Zone (SEZ) Restoration Program.
C. Best Management Practices (BMP) Implementation Program.
D. Monitoring Program.

The financial plan will be submitted to the State Water Resources Control Board (State Board) for acceptance by May 30, 1990.

II. TRPA will submit an annual 208 Plan report to the State Board by July 30 of each year, beginning in 1990, which will summarize monitoring results and trends for the following parameters:

A. <u>Water Quality</u>:

1. Littoral and pelagic water quality of Lake Tahoe, including primary productivity and clarity.

2. Lake Tahoe tributaries for total nitrogen, phosphorus, iron, and suspended sediment. Data will be analyzed for individual tributaries, watersheds, and the basin as a whole.

3. Surface runoff for total nitrogen, phosphorus, iron, and suspended sediment. Data will be analyzed for individual watersheds and the basin as a whole.

4. Ground water for total nitrogen, phosphorus, iron, turbidity, and grease and oil.

5. Other lakes in the Tahoe Region, for all applicable State Standards. "Other lakes" shall include, but not be limited to, Fallen Leaf, Upper and Lower Echo, and Cascade Lakes.

B. Airborne Sources of Nutrients:

1. Traffic volume in terms of vehicle miles travelled (VMT) for peak summer days.

2. Atmospheric Nutrient Loading in terms of annual average particulate NO_3 concentration (ug/m^3) at the Lake Tahoe Boulevard air quality monitoring station, and at appropriate air quality monitoring buoys on the Lake Tahoe surface.

C. Other Programs:

1. CIP program expenditures, miles of improved road shoulder, acreage of improved right of way, and operation and maintenance costs.

2. SEZ restoration program expenditures and acreage restored.

3. Results of a stratified random sample survey of the rate of BMP application (i.e., voluntary BMPs).

4. Annual amount of land coverage and/or disturbance, as derived from the data base of TRPA-approved building permits.

5. Update on status of the financial plan, including revised costs of and success in obtaining funds for implementing key mitigation programs, specified in Condition I, and any contingency measures that will be taken if adequate funds have not been acquired for each program.

III. TRPA will submit a progress report to the State Board, beginning in December 1991 and every five years thereafter, for the life of the revised 208 Plan. The five-year report will summarize the data contained in the previous annual reports, assess trends shown by the data, and determine progress made toward all Plan Thresholds and interim targets. In addition, the 1991 five-year report will:

A. Provide interim targets and compliance schedules for all Thresholds.

B. Evaluate the adequacy of the revised 208 Plan's monitoring program.

C. Evaluate the adequacy of TRPA water quality mitigation fees and all other components of TRPA's financial plan in providing necessary funds for implementation of the revised 208 Plan.

IV. TRPA will notify the State Board 90 days in advance of a proposed change in the Individual Parcel Evaluation System (IPES) line. Upon notification of a proposed move in the IPES line, the State Board will assess the reasonableness of progress being made toward meeting the revised 208 Plan's Thresholds and interim targets and, in accordance with its responsibilities as a certifying agency under Section 208 of the Clean Water Act, make a determination regarding continued State Board certification of the revised 208 Plan.

V. No 208 Plan update or amendment shall be effective unless and until it has been certified by the State Board and approved by the U.S. Environmental Protection Agency.

CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

STATE POLICY FOR WATER QUALITY CONTROL

I. FOREWORD

To assure a comprehensive statewide program of water quality control, the California Legislature by its adoption of the Porter-Cologne Water Quality Control Act in 1969 set forth the following statewide policy:

> The people of the state have a primary interest in the conservation, control, and utilization of the water resources, and the quality of all the waters shall be protected for use and enjoyment.
>
> Activities and factors which may affect the quality of the waters shall be regulated to attain the highest water quality which is reasonable, considering all demands being made and to be made on those waters and the total values involved, beneficial and detrimental, economic and social, tangible and intangible.
>
> The health, safety, and welfare of the people requires that there be a statewide program for the control of the quality of all the waters of the state. The state must be prepared to exercise its full power and jurisdiction to protect the quality of waters from degradation.
>
> The waters of the state are increasingly influenced by interbasin water development projects and other statewide considerations. Factors of precipitation, topography, population, recreation, agriculture, industry, and economic development vary from region to region. The statewide program for water quality control can be most effectively administered regionally, within a framework of statewide coordination and policy.

To carry out this policy, the Legislature established the State Water Resources Control Board and nine California Regional Water Quality Control Boards as the principal state agencies with primary responsibilities for the coordination and control of water quality. The State Board is required pursuant to legislative directives set forth in the California Water Code (Division 7, Chapter 3, Article 3, Sections 13140 Ibid) to formulate and adopt state policy for water quality control consisting of all or any of the following:

Adopted by the State Water Resources Control Board by motion of July 6, 1972.

I. (continued)

Water quality principles and guidelines for long-range resource planning, including groundwater and surface water management programs and control and use of reclaimed water.

Water quality objectives at key locations for planning and operation of water resource development projects and for water quality control activities.

Other principles and guidelines deemed essential by the State Board for water quality control.

II. GENERAL PRINCIPLES

The State Water Resources Control Board hereby finds and declares that protection of the quality of the waters of the State for use and enjoyment by the people of the State requires implementation of water resources management programs which will conform to the following general principles:

1. Water rights and water quality control decisions must assure protection of available fresh water and marine water resources for maximum beneficial use.

2. Municipal, agricultural, and industrial wastewaters must be considered as a potential integral part of the total available fresh water resource.

3. Coordinated management of water supplies and wastewaters on a regional basis must be promoted to achieve efficient utilization of water.

4. Efficient wastewater management is dependent upon a balanced program of source control of environmentally hazardous substances[1/], treatment of wastewaters, reuse of reclaimed water, and proper disposal of effluents and residuals.

5. Substances not amenable to removal by treatment systems presently available or planned for the immediate future must be prevented from entering sewer systems

1/ Those substances which are harmful or potentially harmful even in extremely small concentration to man, animals, or plants because of biological concentration, acute or chronic toxicity, or other phenomenon.

in quantities which would be harmful to the aquatic environment, adversely affect beneficial uses of water, or affect treatment plant operation. Persons responsible for the management of waste collection, treatment, and disposal systems must actively pursue the implementation of their objective of source control for environmentally hazardous substances. Such substances must be disposed of such that environmental damage does not result.

6. Wastewater treatment systems must provide sufficient removal of environmentally hazardous substances which cannot be controlled at the source to assure against adverse effects on beneficial uses and aquatic communities.

7. Wastewater collection and treatment facilities must be consolidated in all cases where feasible and desirable to implement sound water quality management programs based upon long-range economic and water quality benefits to an entire basin.

8. Institutional and financial programs for implementation of consolidated wastewater management systems must be tailored to serve each particular area in an equitable manner.

9. Wastewater reclamation and reuse systems which assure maximum benefit from available fresh water resources shall be encouraged. Reclamation systems must be an appropriate integral part of the long-range solution to the water resources needs of an area and incorporate provisions for salinity control and disposal of nonreclaimable residues.

10. Wastewater management systems must be designed and operated to achieve maximum long-term benefit from the funds expended.

11. Water quality control must be based upon latest scientific findings. Criteria must be continually refined as additional knowledge becomes available.

12. Monitoring programs must be provided to determine the effects of discharges on all beneficial water uses including effects on aquatic life and its diversity and seasonal fluctuations.

III. PROGRAM OF IMPLEMENTATION

Water quality control plans and waste discharge requirements hereafter adopted by the State and Regional Boards under Division 7 of the California Water Code shall conform to this policy.

This policy and subsequent State plans will guide the regulatory, planning, and financial assistance programs of the State and Regional Boards. Specifically, they will (1) supersede any regional water quality control plans for the same waters to the extent of any conflict, (2) provide a basis for establishing or revising waste discharge requirements when such action is indicated, and (3) provide general guidance for the development of basin plans.

Water quality control plans adopted by the State Board will include minimum requirements for effluent quality and may specifically define the maximum constituent levels acceptable for discharge to various waters of the State. The minimum effluent requirements will allow discretion in the application of the latest available technology in the design and operation of wastewater treatment systems. Any treatment system which provides secondary treatment, as defined by the specific minimum requirements for effluent quality, will be considered as providing the minimum acceptable level of treatment. Advanced treatment systems will be required where necessary to meet water quality objectives.

Departures from this policy and water quality control plans adopted by the State Board may be desirable for certain individual cases. Exceptions to the specific provisions may be permitted within the broad framework of well established goals and water quality objectives.

STATE WATER RESOURCES CONTROL BOARD
RESOLUTION NO. 75-89

ADOPTING AMENDMENTS TO THE "WATER QUALITY CONTROL PLAN FOR CONTROL OF TEMPERATURE IN THE COASTAL AND INTERSTATE WATERS AND ENCLOSED BAYS AND ESTUARIES OF CALIFORNIA" (THERMAL PLAN)

WHEREAS:

1. On February 25, 1975, the State Water Resources Control Board conducted a public hearing to consider proposed amendments to the "Water Quality Control Plan for Control of Temperature in the Coastal and Interstate Waters and Enclosed Bays and Estuaries of California", hereinafter called the Thermal Plan.

2. As a result of that hearing, evidence was obtained from various parties regarding the desirability of the proposed amendments.

3. The State Water Resources Control Board has been advised by the Environmental Protection Agency that the proposed amendments are necessary in order to bring the Plan into full conformance with the provisions of P.L. 92-500.

THEREFORE BE IT RESOLVED:

That the State Water Resources Control Board adopt the proposed amendments as attached.

CERTIFICATION

The undersigned, Executive Officer of the State Water Resources Control Board, does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Resources Control Board held on SEP 18 1975

Bill B. Dendy

Bill B. Dendy
Executive Officer

STATE WATER RESOURCES CONTROL BOARD
ROOM 1140, RESOURCES BUILDING
1416 NINTH STREET • SACRAMENTO 95814

JUN - 5 1972

NOTICE

ADOPTION OF NEW "WATER QUALITY CONTROL PLAN FOR CONTROL OF TEMPERATURE IN THE COASTAL AND INTERSTATE WATERS AND ENCLOSED BAYS AND ESTUARIES OF CALIFORNIA"

On May 18, 1972, the State Water Resources Control Board adopted a revised version of the above plan (formerly called Policy).

The following changes were made:

1. Due to changes in the California Water Code effective March 4, 1972, the title was changed to:

   "Water Quality Control Plan For..."

2. A provision was added that the Environmental Protection Agency must approve all exemptions from water quality objectives of the plan.

3. The time schedules for conducting studies of the effects of existing discharges was shortened.

We will advise you of Environmental Protection Agency's approval which we anticipate receiving shortly.

Bill B. Dendy
Executive Officer

State Water Resources Control Board

WATER QUALITY CONTROL PLAN FOR CONTROL OF TEMPERATURE IN THE COASTAL AND INTERSTATE WATERS AND ENCLOSED BAYS AND ESTUARIES OF CALIFORNIA[1]/

DEFINITION OF TERMS

1. Thermal Waste - Cooling water and industrial process water used for the purpose of transporting waste heat.

2. Elevated Temperature Waste - Liquid, solid, or gaseous material including thermal waste discharged at a temperature higher than the natural temperature of receiving water. Irrigation return water is not considered elevated temperature waste for the purpose of this plan.

3. Natural Receiving Water Temperature - The temperature of the receiving water at locations, depths, and times which represent conditions unaffected by any elevated temperature waste discharge or irrigation return waters.

4. Interstate Waters - All rivers, lakes, artificial impoundments, and other waters that flow across or form a part of the boundary with other states of Mexico.

5. Coastal Waters - Waters of the Pacific Ocean outside of enclosed bays and estuaries which are within the territorial limits of California.

6. Enclosed Bays - Indentations along the coast which enclose an area of oceanic water within distinct headlands or harbor works. Enclosed bays will include all bays where the narrowest distance between headlands or outermost harbor works is less than 75 percent of the greatest dimension of the enclosed portion of the bay. This definition includes but is not limited to the following: Humboldt Bay, Bodega Harbor, Tomales Bay, Drakes Estero, San Francisco Bay, Carmel Bay, Morro Bay, Los Angeles Harbor, Upper and Lower Newport Bay, Mission Bay, and San Diego Bay.

7. Estuaries and Coastal Lagoons - Waters at the mouths of streams which serve as mixing zones for fresh and ocean water during a major portion of the year. Mouths of streams which are temporarily separated from the ocean by sandbars shall be considered as estuaries. Estuarine waters will generally be considered to extend from a bay or the open

1/ This plan revises and supersedes the policy adopted by the State Board on January 7, 1971 and revised October 13, 1971

ocean to the upstream limit of tidal action but may be considered to extend seaward if significant mixing of fresh and saltwater occurs in the open coastal waters. The waters described by this definition include but are not limited to the Sacramento-San Joaquin Delta as defined by Section 12220 of the California Water Code, Suisun Bay, Carquinez Strait downstream to Carquinez Bridge and appropriate areas of Smith River, Klamath River, Mad River, Eel River, Noyo River, and Russian River.

8. Cold Interstate Waters - Streams and lakes having a range of temperatures generally suitable for trout and salmon including but not limited to the following: Lake Tahoe, Truckee River, West Fork Carson River, East Fork Carson River, West Walker River and Lake Topaz, East Walker River, Minor California-Nevada Interstate Waters, Klamath River, Smith River, Goose Lake, and Colorado River from the California-Nevada stateline to the Needles-Topoc Highway Bridge.

9. Warm Interstate Waters - Interstate streams and lakes having a range of temperatures generally suitable for warm water fishes such as bass and catfish. This definition includes but is not limited to the following: Colorado River from the Needles-Topock Highway Bridge to the northerly international boundary of Mexico, Tijuana River, New River, and Alamo River.

10. Existing Discharge - Any discharge (a) which is presently taking place, or (b) for which waste discharge requirements have been established and construction commenced prior to the adoption of this plan, or (c) any material change in an existing discharge for which construction has commenced prior to the adoption of this plan. Commencement of construction shall include execution of a contract for onsite construction or for major equipment which is related to the condenser cooling system.

    Major thermal discharges under construction which are included within this definition are:

    A. Diablo Canyon Units 1 and 2, Pacific Gas and Electric Company.

    B. Ormond Beach Generating Station Units 1 and 2, Southern California Edison Company.

    C. Pittsburg No. 7 Generating Plant, Pacific Gas and Electric Company.

    D. South Bay Generating Plant Unit 4 and Encina Unit 4, San Diego Gas and Electric Company.

11. New Discharge - Any discharge (a) which is not presently taking place unless waste discharge requirements have been established and construction as defined in Paragraph 10 has commenced prior to adoption of this plan or (b) which is presently taking place and for which a material change is proposed but no construction as defined in Paragraph 10 has commenced prior to adoption of this plan.

12. Planktonic Organism - Phytoplankton, zooplankton and the larvae and eggs of worms, molluscs, and anthropods, and the eggs and larval forms of fishes.

13. Limitations or Additional Limitations - Restrictions on the temperature, location, or volume of a discharge, or restrictions on the temperature of receiving water in addition to those specifically required by this plan.

SPECIFIC WATER QUALITY OBJECTIVES

1. Cold Interstate Waters

   A. Elevated temperature waste discharges into cold interstate waters are prohibited.

2. Warm Interstate Waters

   A. Thermal waste discharges having a maximum temperature greater than 5°F above natural receiving water temperature are prohibited.

   B. Elevated temperature wastes shall not cause the temperature of warm interstate waters to increase by more than 5°F above natural temperature at any time or place.

   C. Colorado River - Elevated temperature wastes shall not cause the temperature of the Colorado River to increase above the natural temperature by more than 5°F or the temperature of Lake Havasu to increase by more than 3°F provided that such increases shall not cause the maximum monthly temperature of the Colorado River to exceed the following:

January	-	60°F	July	-	90°F
February	-	65°F	August	-	90°F
March	-	70°F	September	-	90°F
April	-	75°F	October	-	82°F
May	-	82°F	November	-	72°F
June	-	86°F	December	-	65°F

D. Lost River - Elevated temperature wastes discharged to the Lost River shall not cause the temperature of the receiving water to increase by more than $2^{\circ}F$ when the receiving water temperature is less than $62^{\circ}F$, and $0^{\circ}F$ when the receiving water temperature exceeds $62^{\circ}F$.

E. Additional limitations shall be imposed when necessary to assure protection of beneficial uses.

3. Coastal Waters

A. Existing discharges

(1) Elevated temperature wastes shall comply with limitations necessary to assure protection of the beneficial uses and areas of special biological significance.

B. New Discharges

(1) Elevated temperature wastes shall be discharged to the open ocean away from the shoreline to achieve dispersion through the vertical water column.

(2) Elevated temperature wastes shall be discharged a sufficient distance from areas of special biological significance to assure the maintenance of natural temperature in these areas.

(3) The maximum temperature of thermal waste discharges shall not exceed the natural temperature of receiving waters by more than $20^{\circ}F$.

(4) The discharge of elevated temperature wastes shall not result in increases in the natural water temperature exceeding $40^{\circ}F$ at (a) the shoreline, (b) the surface of any ocean substrate, or (c) the ocean surface beyond 1,000 feet from the discharge system. The surface temperature limitation shall be maintained at least 50 percent of the duration of any complete tidal cycle.

Alternate water quality objectives may be specified in waste discharge requirements if such objectives would assure full protection of the aquatic environment. Such objectives may be specified in waste discharge requirements only after receipt by the regional board of written concurrence from the State Board and the Environmental Protection Agency.

(5) Additional limitations shall be imposed when necessary to assure protection of beneficial uses.

4. Enclosed Bays

A. Existing discharges

(1) Elevated temperature waste discharges shall comply with limitations necessary to assure protection of beneficial uses.

B. New discharges

(1) Elevated temperature waste discharges shall comply with limitations necessary to assure protection of beneficial uses. The maximum temperature of waste discharges shall not exceed the natural temperature of the receiving waters by more than 20°F.

(2) Thermal waste discharges having a maximum temperature greater than 4°F above the natural temperature of the receiving water are prohibited.

5. Estuaries

A. Existing discharges

(1) Elevated temperature waste discharges shall comply with the following:

a. The maximum temperature shall not exceed the natural receiving water temperature by more than 20°F.

b. Elevated temperature waste discharges either individually or combined with other discharges shall not create a zone, defined by water temperatures of more than 1°F above natural receiving water temperature, which exceeds 25 percent of the cross-sectional area of a main river channel at any point.

c. No discharge shall cause a surface water temperature rise greater than 4°F above the natural temperature of the receiving waters at any time or place.

d. Additional limitations shall be imposed when necessary to assure protection of beneficial uses.

(2) Thermal waste discharges shall comply with the provisions of 5A(1) above and, in addition, the maximum temperature of thermal waste discharges shall not exceed 86°F.

B. New discharges

(1) Elevated temperature waste discharges shall comply with item 5A(1) above.

(2) Thermal waste discharges having a maximum temperature greater than 4°F above the natural temperature of the receiving water are prohibited.

(3) Additional limitations shall be imposed when necessary to assure protection of beneficial uses.

GENERAL WATER QUALITY PROVISIONS

1. Additional limitations shall be imposed in individual cases if necessary for the protection of specific beneficial uses and areas of special biological significance. When additional limitations are established, the extent of surface heat dispersion will be delineated by a calculated 1-1/2°F isotherm which encloses an appropriate dispersion area. The extent of the dispersion area shall be:

   A. Minimized to achieve dispersion through the vertical water column rather than at the surface or in shallow water.

   B. Defined by the regional board for each existing and proposed discharge after receipt of a report prepared in accordance with the implementation section of this plan.

2. The cumulative effects of elevated temperature waste discharges shall not cause temperatures to be increased except as provided in specific water quality objectives contained herein.

3. Areas of special biological significance shall be designated by the State Board after public hearing by the regional board and review of its recommendations.

~~4. An exception to the specific water quality objectives of this plan may be authorized by a regional board for a specific discharge upon a finding following public hearing that:~~

   ~~A. An elevated temperature waste discharge in compliance with modified objectives will result in the enhancement of beneficial uses as compared to predischarge conditions, or~~

~~B. The use of heat on an intermittent basis to control fouling organisms in intake and discharge structures will result in less potential for deleterious effects upon beneficial uses than other alternative methods (heat, in addition to that required for cleaning of intake and discharge structures, shall not be used for cleaning of condenser units); or~~

~~C. Changes in existing discharge structures or their operation to obtain compliance with water quality objectives would result in an environmental impact greater than would occur with modified water quality objectives; or~~

~~D. Compliance by existing dischargers with specific water quality objectives would require modification of operations or facilities not commensurate with benefit to the aquatic environment.~~

~~Such authorization shall be effective only upon concurrence by the State Board and the Environmental Protection Agency.~~

4. <u>Regional Boards may, in accordance with Section 316(a) of the Federal Water Pollution Control Act of 1972, and subsequent federal regulations including 40 CFR 122, grant an exception to Specific Water Quality Objectives in this Plan. Prior to becoming effective, such exceptions and alternative less stringent requirements must receive the concurrence of the State Board</u>

5. Natural water temperature will be compared with waste discharge temperature by near-simultaneous measurements accurate to within 1°F. In lieu of near-simultaneous measurements, measurements may be made under calculated conditions of constant waste discharge and receiving water characteristics.

IMPLEMENTATION

1. The State Water Resources Control Board and the California Regional Water Quality Control Boards will administer this plan by establishing waste discharge requirements for discharges of elevated temperature wastes.

2. This plan is effective as of the date of adoption by the State Water Resources Control Board and the sections pertaining to temperature control in each of the policies and plans for the individual interstate and coastal waters shall be void and superseded by all applicable provisions of this plan.

3. Existing and future dischargers of thermal waste shall conduct a study to define the effect of the discharge on beneficial uses and, for existing discharges, determine design and operating changes which would be necessary to achieve compliance with the provisions of this plan.

4. Waste discharge requirements for existing elevated temperature wastes shall be reviewed to determine the need for studies of the effect of the discharge on beneficial uses, changes in monitoring programs and revision of waste discharge requirements.

5/ Completed studies for existing discharges shall be submitted to the appropriate regional board prior to July 1, 1973. The regional board shall review all studies and make necessary revisions to waste discharge requirements by July 1, 1974 to assure compliance with the provisions of this plan.

Revised waste discharge requirements shall include a time schedule which assures compliance with water quality objectives by July 1, 1977, unless the discharger can demonstrate that a longer time schedule is required to complete construction of necessary facilities; or, in accordance with any time schedule contained in guidelines promulgated pursuant to Section 304(b) of the Federal Water Pollution Control Act.

5. All waste discharge requirements shall include a time schedule which assures compliance with water quality objectives by July 1, 1977, unless the discharger can demonstrate that a longer time schedule is required to complete construction of necessary facilities; or, in accordance with any time schedule contained in guidelines promulgated pursuant to Section 304(b) of the Federal Water Pollution Control Act.

6/ Completed studies for existing discharges of thermal wastes existing wastes discharges, and proposed new waste discharges, and proposed revised waste discharges will be submitted by the State Board to EPA for review and comment prior to adoption of revised waste discharge requirements.

6
7/ Proposed dischargers of elevated temperature wastes may be required by the regional board to submit such studies prior to the establishment of waste discharge requirements. The regional board shall include in its requirements appropriate postdischarge studies by the discharger.

7
8/ The scope of any necessary studies shall be as outlined by the regional board and shall be designed to include the following as applicable to an individual discharge:

A. Existing conditions in the aquatic environment.

B. Effects of the existing discharge on beneficial uses.

C. Predicted conditions in the aquatic environment with waste discharge facilities designed and operated in compliance with the provisions of this plan.

D. Predicted effects of the proposed discharge on beneficial uses.

E. An analysis of costs and benefits of various design alternatives.

F. The extent to which intake and outfall structures are located and designed so that the intake of planktonic organisms is at a minimum, waste plumes are prevented from touching the ocean substrate or shorelines, and the waste is dispersed into an area of pronounced along-shore or offshore currents.

8. All waste discharge requirements adopted for discharges of elevated temperature wastes shall be monitored in order to determine compliance with effluent or receiving water temperature (or heat) requirements.

Furthermore, for significant thermal discharges as determined by the Regional Board or State, regional boards shall require expanded monitoring programs, to be carried out either on a continuous or periodic basis, designed to assess whether the source continues to provide adequate protection to beneficial uses (including the protection and propagation of a balanced indigenous community of fish, shellfish, and wildlife, in and on the body of water into which the discharge is made). When periodic expanded monitoring programs are specified, the frequency of the program shall reflect the probable impact of the discharge.

9. The State Board or regional board may require a discharger(s) to pay a public agency or other appropriate person an amount sufficient to carry out the expanded monitoring program required pursuant to paragraph 8 above if:

a. The discharger has previously failed to carry out monitoring programs in a manner satisfactory to the State Board or regional board, or:

b. More than a single facility, under separate ownerships, may significantly affect the thermal characteristics of the body of water, and the owners of such facilities are unable to reach agreement on a cooperative program within a reasonable time period specified by the State Board or regional board.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
100 CALIFORNIA STREET
SAN FRANCISCO, CALIFORNIA 94111

Aug. to Legal
Copies Board
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- PRB
- Chron
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W. W. Adams, Chairman
State Water Resources Control Board
1416 Ninth Street
Sacramento CA 95814

Dear Mr. Adams:

On June 18, 1975, my representative met with your staff to discuss the positions of our respective agencies regarding the four existing exception provisions contained in California's Thermal Plan and the revised exception procedure proposed by your staff for the April 2, 1975 workshop. Your staff explained that the State Board was concerned that the language contained in Section 316(a) of PL 92-500 may not be sufficient to prevent the commitment of large sums of capital for relatively little environmental benefit. My representative conveyed our opinion that Section 316(a) constituted the only exception procedure which, under PL 92-500, could be applied to water quality standards pertaining to the thermal component of any discharge.

I appreciate the Board's concern. Section 316(a) was included in the Federal Act to preclude the expenditure of large sums of capital for no benefit. Thus, the basic intent of Section 316(a) is identical to that interest expressed by the State Board. Section 316(a) and the implementing regulations will serve as an exception to any water quality standard for heat when the discharger can satisfactorily demonstrate to the permitting agency that the discharge will not result in any appreciable harm to the biological community associated with the receiving water.

Appreciable harm is damage to the balanced, indigenous community, or to community components which results in such phenomena as the following:

- Substantial increase in abundance or distribution of any nuisance species or heat tolerant community not representative of the highest community development achievable in receiving waters of comparable quality.

- Substantial decrease of formerly indigenous species, other than nuisance species.

- Changes in community structure to resemble a simpler successional stage than is natural for the locality and season in question.

- Unaesthetic appearance, odor or taste of the waters.

- Elimination of an established or potential economic or recreational use of the waters.

- Reduction of the successful completion of life cycles of indigenous species, including those of migratory species.

- Substantial reduction of community heterogeneity or trophic structure.

This definition describes harm which should be considered appreciable. It is not intended that every change in flora and fauna should be considered appreciable harm. Biological changes resulting from discharges of heat will be spatially distributed from any discharge point. The magnitude and spatial distribution of such changes are the basis upon which a judgment must be made.

While I appreciate your concern, I do feel Section 316(a) provides the flexibility to insure that funds will only be expended when true environmental gains are to be made. I feel that it would be in the best interest of all the dischargers regulated under the Thermal Plan to retain the single exception procedure with a single set of rules.

Sincerely,

for Paul De Falco, Jr.
Regional Administrator

C O P Y

State of California

Memorandum

To : Jananne Sharpless
Secretary
Environmental Affairs Agency

Date: July 10, 1986

/s/
W. DON MAUGHAN
Chairman
From : STATE WATER RESOURCES CONTROL BOARD

Subject: RECONFIRMATION OF STATE BOARD RESOLUTION NO. 68-16

State Board Resolution 68-16, the "Statement of Policy with Respect to Maintaining High Quality of Waters in California", was adopted as part of State policy for water quality control. It has also been adopted, as a water quality objective, in all 16 of the State's regional water quality control plans. Recent interest in Resolution 68-16 has caused the State Board to review that policy. It has been the cornerstone of this State's successful water program for almost 20 years. We see no reason to amend that policy and we will continue to follow it and make it part of the regional plans.

If and when the Board decides amendments are ripe, the State Board will follow the procedures set forth in the Porter-Cologne Water Quality Control Act. These procedures establish public review periods and public hearing requirements, and provide for the participation of the regional boards.

cc: Regional Board Chairs
Regional Board Executive Officers

STATE WATER RESOURCES CONTROL BOARD

RESOLUTION NO. 68-16

STATEMENT OF POLICY WITH RESPECT TO
MAINTAINING HIGH QUALITY OF WATERS IN CALIFORNIA

WHEREAS the California Legislature has declared that it is the policy of the State that the granting of permits and licenses for unappropriated water and the disposal of wastes into the waters of the State shall be so regulated as to achieve highest water quality consistent with maximum benefit to the people of the State and shall be controlled so as to promote the peace, health, safety and welfare of the people of the State; and

WHEREAS water quality control policies have been and are being adopted for waters of the State; and

WHEREAS the quality of some waters of the State is higher than that established by the adopted policies and it is the intent and purpose of this Board that such higher quality shall be maintained to the maximum extent possible consistent with the declaration of the Legislature;

NOW, THEREFORE, BE IT RESOLVED:

1. Whenever the existing quality of water is better than the quality established in policies as of the date on which such policies become effective, such existing high quality will be maintained until it has been demonstrated to the State that any change will be consistent with maximum benefit to the people of the State, will not unreasonably affect present and anticipated beneficial use of such water and will not result in water quality less than that prescribed in the policies.

2. Any activity which produces or may produce a waste or increased volume or concentration of waste and which discharges or proposes to discharge to existing high quality waters will be required to meet waste discharge requirements which will result in the best practicable treatment or control of the discharge necessary to assure that (a) a pollution or nuisance will not occur and (b) the highest water quality consistent with maximum benefit to the people of the State will be maintained.

3. In implementing this policy, the Secretary of the Interior will be kept advised and will be provided with such information as he will need to discharge his responsibilities under the Federal Water Pollution Control Act.

BE IT FURTHER RESOLVED that a copy of this resolution be forwarded to the Secretary of the Interior as part of California's water quality control policy submission.

CERTIFICATION

The undersigned, Executive Officer of the State Water Resources Control Board, does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Resources Control Board held on October 24, 1968.

Dated: October 28, 1968

Kerry W. Mulligan
Executive Officer
State Water Resources
Control Board

STATE WATER RESOURCES CONTROL BOARD
RESOLUTION NO. 75-58

WATER QUALITY CONTROL POLICY ON THE USE AND DISPOSAL OF INLAND WATERS USED FOR POWERPLANT COOLING

WHEREAS:

1. Basin planning conducted by the State Board has shown that there is presently no available water for new allocations in some basins.

2. Projected future water demands, when compared to existing developed water supplies, indicate that general freshwater shortages will occur in many areas of the State prior to the year 2000.

3. The improper disposal of powerplant cooling waters may have an adverse impact on the quality of inland surface and groundwaters.

4. It is believed that further development of water in the Central Valley will reduce the quantity of water available to meet Delta outflow requirements and protect Delta water quality standards.

THEREFORE, BE IT RESOLVED, that

1. The Board hereby adopts the "Water Quality Control Policy on the Use and Disposal of Inland Waters Used for Powerplant Cooling".

2. The Board hereby directs all affected California Regional Water Quality Control Boards to implement the applicable provisions of the policy.

3. The Board hereby directs staff to coordinate closely with the State Energy Resources Conservation and Development Commission and other involved state and local agencies as this policy is implemented.

CERTIFICATION

The undersigned, Executive Officer of the State Water Resources Control Board, does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Resources Control Board held on June 19, 1975.

Bill B. Dendy

Bill B. Dendy
Executive Officer

STATE WATER RESOURCES CONTROL BOARD
RESOLUTION NO. 77-1

POLICY WITH RESPECT TO WATER
RECLAMATION IN CALIFORNIA

WHEREAS:

1. The California Constitution provides that the water resources of the State be put to beneficial use to the fullest extent of which they are capable, and that waste or unreasonable use or unreasonable method of use of water be prevented, and that conservation of such waters is to be exercised with a view to the reasonable and beneficial use thereof in the interest of the people and for the public welfare;

2. The California Legislature has declared that the State Water Resources Control Board and each Regional Water Quality Control Board shall be the principal state agencies with primary responsibility for the coordination and control of water quality;

3. The California Legislature has declared that the people of the State have a primary interest in the development of facilities to reclaim water containing waste to supplement existing surface and underground water supplies;

4. The California Legislature has declared that the State shall undertake all possible steps to encourage the development of water reclamation facilities so that reclaimed water may be made available to help meet the growing water requirements of the State;

5. The Board has reviewed the document entitled "Policy and Action Plan for Water Reclamation in California", dated December 1976. This document recommends a variety of actions to encourage the development of water reclamation facilities and the use of reclaimed water. Some of these actions require direct implementation by the Board; others require implementation by the Executive Officer and the Regional Boards. In addition, this document recognizes that action by many other state, local, and federal agencies and the California State Legislature would also encourage construction of water reclamation facilities and the use of reclaimed water. Accordingly, the Board recommends for its consideration a number of actions intended to coordinate with the program of this Board;

6. The Board must concentrate its efforts to encourage and promote reclamation in water-short areas of the State where reclaimed water can supplement or replace other water supplies without interfering with water rights or instream beneficial uses or placing an unreasonable burden on present water supply systems; and

7. In order to coordinate the development of reclamation potential in California, the Board must develop a data collection, research, planning, and implementation program for water reclamation and reclaimed water uses.

THEREFORE, BE IT RESOLVED:

1. That the State Board adopt the following Principles:

   I. The State Board and the Regional Boards shall encourage, and consider or recommend for funding, water reclamation projects which meet Condition 1, 2, or 3 below and which do not adversely impact vested water rights or unreasonably impair instream beneficial uses or place an unreasonable burden on present water supply systems;

      (1) Beneficial use will be made of wastewaters that would otherwise be discharged to marine or brackish receiving waters or evaporation ponds,

      (2) Reclaimed water will replace or supplement the use of fresh water or better quality water,

      (3) Reclaimed water will be used to preserve, restore, or enhance instream beneficial uses which include, but are not limited to, fish, wildlife, recreation and esthetics associated with any surface water or wetlands.

   II. The State Board and the Regional Boards shall (1) encourage reclamation and reuse of water in water-short areas of the State, (2) encourage water conservation measures which further extend the water resources of the State, and (3) encourage other agencies, in particular the Department of Water Resources, to assist in implementing this policy.

   III. The State Board and the Regional Boards recognize the need to protect the public health including potential vector problems and the environment in the implementation of reclamation projects.

   IV. In implementing the foregoing Principles, the State Board or the Regional Boards, as the case may be, shall take appropriate actions, recommend legislation, and recommend actions by other agencies in the areas of (1) planning, (2) project funding, (3) water rights, (4) regulation and enforcement, (5) research and demonstration, and (6) public involvement and information.

2. That, in order to implement the foregoing Principles, the State Board:

(a) Approves Planning Program Guidance Memorandum No. 9, "PLANNING FOR WASTEWATER RECLAMATION",

(b) Adopts amendments and additions to Title 23, California Administrative Code Sections 654.4, 761, 764.9, 783, 2101, 2102, 2107, 2109, 2109.1, 2109.2, 2119, 2121, 2133(b)(2), and 2133(b)(3),

(c) Approves Grants Management Memorandum No. 9.01, "WASTEWATER RECLAMATION",

(d) Approves the Division of Planning and Research, Procedures and Criteria for the Selection of Wastewater Reclamation Research and Demonstration Projects,

(e) Approves "GUIDELINES FOR REGULATION OF WATER RECLAMATION",

(f) Approves the Plan of Action contained in Part III of the document identified in Finding Five above,

(g) Directs the Executive Officer to establish an Interagency Water Reclamation Policy Advisory Committee. Such Committee shall examine trends, analyze implementation problems, and report annually to the Board the results of the implementation of this policy, and

(h) Authorizes the Chairperson of the Board and directs the Executive Officer to implement the foregoing Principles and the Plan of Action contained in Part III of the document identified in Finding Five above, as appropriate.

3. That not later than July 1, 1978, the Board shall review this policy and actions taken to implement it, along with the report prepared by the Interagency Water Reclamation Policy Advisory Committee, to determine whether modifications to this policy are appropriate to more effectively encourage water reclamation in California.

4. That the Chairperson of the Board shall transmit to the California Legislature a complete copy of the "Policy and Action Plan for Water Reclamation in California".

CERTIFICATION

The undersigned, Executive Officer of the State Water Resources Control Board, does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a special meeting of the State Water Resources Control Board held on January 6, 1977.

Dated: JAN 6 1977

Bill B. Dendy

Bill B. Dendy
Executive Officer

STATE WATER RESOURCES CONTROL BOARD
RESOLUTION NO. 87- 22

POLICY ON THE DISPOSAL OF SHREDDER WASTE

WHEREAS:

1. Chemical analysis of wastes resulting from the shredding of automobile bodies, household appliances, and sheet metal (hereinafter shredder waste) by methods stipulated by the Department of Health Services (hereinafter DHS) has resulted in the classification of shredder waste as a hazardous waste and the determination that, if inappropriately handled, it could catch fire and release toxic gases.

2. The California Legislature has declared that shredder waste shall not be classified as hazardous for the purposes of disposal if the producer demonstrates that the waste will not pose a threat to human health or water quality if disposed of in a qualified Class III waste management unit, as specified in Section 2533 of Subchapter 15 of Chapter 3 of Title 23 of the California Administrative Code (hereinafter Subchapter 15).

3. DHS has granted shredder waste a variance for the purposes of disposal from hazardous waste management requirements pursuant to Section 66310 of Title 22 of the California Administrative Code.

4. Hazardous waste which has received a variance from DHS for the purposes of disposal is classified as a designated waste pursuant to Section 2522 of Subchapter 15.

5. In general, designated waste must be disposed of in a Class I or Class II waste management unit. However, designated waste may be disposed of in a Class III waste management unit provided that the discharger establishes to the satisfaction of the Regional Water Quality Control Board (hereinafter Regional Board) that the waste presents a lower risk of degrading water quality than is indicated by its classification. (Authority: Section 2520, Subchapter 15)

6. Analysis of shredder waste by the U. S. Environmental Protection Agency's extraction procedure for heavy metals does not normally result in its classification as a hazardous waste.

7. The disposal of shredder waste in a manner such that it is not in contact with putrescible waste or the leachate generated by putrescible waste will not result in the high mobilization of metals indicated by the tests used to determine that shredder waste is hazardous; therefore, such disposal may occur in accordance with Section 2520 of Subchapter 15.

8. Levels of polychlorinated biphenyls (hereinafter PCB) which slightly exceed 50 mg/kg, the level as defined by the U. S. Environmental Protection Agency which requires disposal to an approved site in accordance with the Federal Toxic Substances Control Act, have been measured in some existing shredder waste piles.

THEREFORE BE IT RESOLVED:

1. That shredder waste which is determined hazardous by DHS, but is granted a variance for the purposes of disposal by DHS, is suitable for disposal at Class III waste management units as designated by the Regional Board when it has been demonstrated to the Regional Board that the waste management units at least meet the minimum requirements for a Class III waste management unit as defined by Subchapter 15 provided that:

   a. The shredder waste producer has demonstrated to the Regional Board that the waste contains no more than 50 mg/kg of PCB.

   b. The shredder waste is disposed on the last and highest lift in a closed disposal cell or in an isolated cell solely designated for the disposal of shredder waste.

2. That shredder waste which is not determined hazardous by DHS is suitable for disposal at Class III waste management units as designated by the Regional Board without special segregation or management.

3. That this resolution in no way abridges the rights of the Regional Boards to designate appropriate Class III waste management units for disposal of shredder waste consistent with Section 25143.6 of the Health and Safety Code (Chapter 1395, Statutes of 1985).

CERTIFICATION

The undersigned, Administrative Assistant to the Board, does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Resources Control Board held on March 19, 1987.

Maureen Marché
Administrative Assistant to the Board

STATE WATER RESOURCES CONTROL BOARD
RESOLUTION NO. 92-49
(As Amended on April 21, 1994 and October 2, 1996)
POLICIES AND PROCEDURES FOR INVESTIGATION AND CLEANUP AND ABATEMENT OF DISCHARGES UNDER WATER CODE SECTION 13304

WHEREAS:

1. California Water Code (WC) Section 13001 provides that it is the intent of the Legislature that the State Water Resources Control Board (State Water Board) and each Regional Water Quality Control Board (Regional Water Board) shall be the principal state agencies with primary responsibility for the coordination and control of water quality. The State and Regional Water Boards shall conform to and implement the policies of the Porter-Cologne Water Quality Control Act (Division 7, commencing with WC Section 13000) and shall coordinate their respective activities so as to achieve a unified and effective water quality control program in the state;

2. WC Section 13140 provides that the State Water Board shall formulate and adopt State Policy for Water Quality Control;

3. WC Section 13240 provides that Water Quality Control Plans shall conform to any State Policy for Water Quality Control;

4. WC Section 13304 requires that any person who has discharged or discharges waste into waters of the state in violation of any waste discharge requirement or other order or prohibition issued by a Regional Water Board or the State Water Board, or who has caused or permitted, causes or permits, or threatens to cause or permit any waste to be discharged or deposited where it is, or probably will be, discharged into the waters of the state and creates, or threatens to create, a condition of pollution or nuisance may be required to clean up the discharge and abate the effects thereof. This section authorizes Regional Water Boards to require complete cleanup of all waste discharged and restoration of affected water to background conditions (i.e., the water quality that existed before the discharge). The term waste discharge requirements includes those which implement the National Pollutant Discharge Elimination System;

5. WC Section 13307 provides that the State Water Board shall establish policies and procedures that its representatives and the representatives of the Regional Water Boards shall follow for the oversight of investigations and cleanup and abatement activities resulting from discharges of hazardous substances, including:

a. The procedures the State Water Board and the Regional Water Boards will follow in making decisions as to when a person may be required to undertake an investigation to determine if an unauthorized hazardous substance discharge has occurred;

b. Policies for carrying out a phased, step-by-step investigation to determine the nature and extent of possible soil and ground water contamination or pollution at a site;

c. Procedures for identifying and utilizing the most cost-effective methods for detecting contamination or pollution and cleaning up or abating the effects of contamination or pollution;

d. Policies for determining reasonable schedules for investigation and cleanup, abatement, or other remedial action at a site. The policies shall recognize the danger to public health and the waters of the state posed by an unauthorized discharge and the need to mitigate those dangers while at the same time taking into account, to the extent possible, the resources, both financial and technical, available to the person responsible for the discharge;

6. "Waters of the state" include both ground water and surface water;

7. Regardless of the type of discharge, procedures and policies applicable to investigations, and cleanup and abatement activities are similar. It is in the best interest of the people of the state for the State Water Board to provide consistent guidance for Regional Water Boards to apply to investigation, and cleanup and abatement;

8. WC Section 13260 requires any person discharging or proposing to discharge waste that could affect waters of the state, or proposing to change the character, location, or volume of a discharge to file a report with and receive requirements from the Regional Water Board;

9. WC Section 13267 provides that the Regional Water Board may require dischargers, past dischargers, or suspected dischargers to furnish those technical or monitoring reports as the Regional Water Board may specify, provided that the burden, including costs, of these reports, shall bear a reasonable relationship to the need for the reports and the benefits to be obtained from the reports;

10. WC Section 13300 states that the Regional Water Board may require a discharger to submit a time schedule of specific actions the discharger shall take in order to correct or prevent a violation of requirements prescribed by the Regional Water Board or the State Water Board;

11. California Health and Safety Code (HSC) Section 25356.1 requires the Department of Toxic Substances Control (DTSC) or, if appropriate, the Regional Water Board to prepare or approve remedial action plans for sites where hazardous substances were released to the environment if the sites have been listed pursuant to HSC Section 25356 (state "Superfund" priority list for cleanup of sites);

12. Coordination with the U.S. Environmental Protection Agency (USEPA), state agencies within the California Environmental Protection Agency (Cal/EPA) (e.g., DTSC, Air Resources Control Board), air pollution control districts, local environmental health agencies, and other responsible federal, state, and local agencies: (l) promotes effective protection of water quality, human health, and the environment and (2) is in the best interest of the people of the state. The principles of coordination are embodied in many

statutes, regulations, and interagency memoranda of understanding (MOU) or agreement which affect the State and Regional Water Boards and these agencies;

13. In order to clean up and abate the effects of a discharge or threat of a discharge, a discharger may be required to perform an investigation to define the nature and extent of the discharge or threatened discharge and to develop appropriate cleanup and abatement measures;

14. Investigations that were not properly planned have resulted in increases in overall costs and, in some cases, environmental damage. Overall costs have increased when original corrective actions were later found to have had no positive effect or to have exacerbated the pollution. Environmental damage may increase when a poorly conceived investigation or cleanup and abatement program allows pollutants to spread to previously unaffected waters of the state;

15. A phased approach to site investigation should facilitate adequate delineation of the nature and extent of the pollution, and may reduce overall costs and environmental damage, because: (1) investigations inherently build on information previously gained; (2) often data are dependent on seasonal and other temporal variations; and (3) adverse consequences of greater cost or increased environmental damage can result from improperly planned investigations and the lack of consultation and coordination with the Regional Water Board. However, there are circumstances under which a phased, iterative approach may not be necessary to protect water quality, and there are other circumstances under which phases may need to be compressed or combined to expedite cleanup and abatement;

16. Preparation of written workplans prior to initiation of significant elements or phases of investigation, and cleanup and abatement generally saves Regional Water Board and discharger resources. Results are superior, and the overall cost-effectiveness is enhanced;

17. Discharger reliance on qualified professionals promotes proper planning, implementation, and long-term cost-effectiveness of investigation, and cleanup and abatement activities. Professionals should be qualified, licensed where applicable, and competent and proficient in the fields pertinent to the required activities. California Business and Professions Code Sections 6735, 7835, and 7835.1 require that engineering and geologic evaluations and judgements be performed by or under the direction of registered professionals;

18. WC Section 13360 prohibits the Regional Water Boards from specifying, but not from suggesting, methods that a discharger may use to achieve compliance with requirements or orders. It is the responsibility of the discharger to propose methods for Regional Water Board review and concurrence to achieve compliance with requirements or orders;

19. The USEPA, California state agencies, the American Society for Testing and Materials, and similar organizations have developed or identified methods successful in particular applications. Reliance on established, appropriate methods can reduce costs of investigation, and cleanup and abatement;

20. The basis for Regional Water Board decisions regarding investigation, and cleanup and abatement includes: (1) site-specific characteristics; (2) applicable state and federal statutes and regulations; (3) applicable water quality control plans adopted by the State Water Board and Regional Water Boards, including beneficial uses, water quality objectives, and implementation plans; (4) State Water Board and Regional Water Board policies, including State Water Board Resolutions No. 68-16 (Statement of Policy with Respect to Maintaining High Quality of Waters in California) and No. 88-63 (Sources of Drinking Water); and (5) relevant standards, criteria, and advisories adopted by other state and federal agencies;

21. Discharges subject to WC Section 13304 may include discharges of waste to land; such discharges may cause, or threaten to cause, conditions of soil or water pollution or nuisance that are analogous to conditions associated with migration of waste or fluid from a waste management unit;

22. The State Water Board has adopted regulations governing discharges of waste to land (California Code of Regulations (CCR), Title 23, Division 3, Chapter 15);

23. State Water Board regulations governing site investigation and corrective action at underground storage tank unauthorized release sites are found in 23 CCR Division 3, Chapter 16, in particular Article 11 commencing with Section 2720;

24. It is the responsibility of the Regional Water Board to make decisions regarding cleanup and abatement goals and objectives for the protection of water quality and the beneficial uses of waters of the state within each Region;

25. Cleanup and abatement alternatives that entail discharge of residual wastes to waters of the state, discharges to regulated waste management units, or leaving wastes in place, create additional regulatory constraints and long-term liability, which must be considered in any evaluation of cost-effectiveness;

26. It is not the intent of the State or Regional Water Boards to allow dischargers, whose actions have caused, permitted, or threaten to cause or permit conditions of pollution, to avoid responsibilities for cleanup. However, in some cases, attainment of applicable water quality objectives for ground water cannot reasonably be achieved. In these cases, the State Water Board determines that establishment of a containment zone is appropriate and consistent with the maximum benefit to the people of the State if applicable requirements contained in the Policy are satisfied. The establishment of a containment zone does not limit or supersede obligations or liabilities that may arise under other laws;

27. The Porter-Cologne Water Quality Control Act allows Regional Water Boards to impose more stringent requirements on discharges of waste than any statewide requirements promulgated by the State Water Board (e.g., in this Policy) or than water quality objectives established in statewide or regional water quality control plans as needed to protect water quality and to reflect regional and site-specific conditions; and

28. Pursuant to Section 13320 of the Water Code, aggrieved persons may petition the State Water Board to review any decisions made under this policy.

THEREFORE BE IT RESOLVED:

These policies and procedures apply to all investigations, and cleanup and abatement activities, for all types of discharges subject to Section 13304 of the WC.

I. The Regional Water Board shall apply the following procedures in determining whether a person shall be required to investigate a discharge under WC Section 13267, or to clean up waste and abate the effects of a discharge or a threat of a discharge under WC Section 13304. The Regional Water Board shall:

A. Use any relevant evidence, whether direct or circumstantial, including, but not limited to, evidence in the following categories:

1. Documentation of historical or current activities, waste characteristics, chemical use, storage or disposal information, as documented by public records, responses to questionnaires, or other sources of information;

2. Site characteristics and location in relation to other potential sources of a discharge;

3. Hydrologic and hydrogeologic information, such as differences in upgradient and downgradient water quality;

4. Industry-wide operational practices that historically have led to discharges, such as leakage of pollutants from wastewater collection and conveyance systems, sumps, storage tanks, landfills, and clarifiers;

5. Evidence of poor management of materials or wastes, such as improper storage practices or inability to reconcile inventories;

6. Lack of documentation of responsible management of materials or wastes, such as lack of manifests or lack of documentation of proper disposal;

7. Physical evidence, such as analytical data, soil or pavement staining, distressed vegetation, or unusual odor or appearance;

8. Reports and complaints;

9. Other agencies' records of possible or known discharge; and

10. Refusal or failure to respond to Regional Water Board inquiries;

B. Make a reasonable effort to identify the dischargers associated with the discharge. It is not necessary to identify all dischargers for the Regional Water Board to proceed with requirements for a discharger to investigate and clean up;

C. Require one or more persons identified as a discharger associated with a discharge or threatened discharge subject to WC Section 13304 to undertake an investigation, based on findings of I.A and I.B above;

D. Notify appropriate federal, state, and local agencies regarding discharges subject to WC Section 13304 and coordinate with these agencies on investigation, and cleanup and abatement activities.

II. The Regional Water Board shall apply the following policies in overseeing: (a) investigations to determine the nature and horizontal and vertical extent of a discharge and (b) appropriate cleanup and abatement measures.

A. The Regional Water Board shall:

1. Require the discharger to conduct investigation, and cleanup and abatement, in a progressive sequence ordinarily consisting of the following phases, provided that the sequence shall be adjusted to accommodate site-specific circumstances, if necessary:

a. Preliminary site assessment (to confirm the discharge and the identity of the discharg- ers; to identify affected or threatened waters of the state and their beneficial uses; and to develop preliminary information on the nature, and vertical and horizontal extent, of the discharge);

b. Soil and water investigation (to determine the source, nature and extent of the discharge with sufficient detail to provide the basis for decisions regarding subsequent cleanup and abatement actions, if any are determined by the Regional Water Board to be necessary);

c. Proposal and selection of cleanup and abatement action (to evaluate feasible and effective cleanup and abatement actions, and to develop preferred cleanup and abatement alternatives);

d. Implementation of cleanup and abatement action (to implement the selected alternative, and to monitor in order to verify progress);

e. Monitoring (to confirm short- and long-term effectiveness of cleanup and abatement);

2. Consider, where necessary to protect water quality, approval of plans for investigation, or cleanup and abatement, that proceed concurrently rather than sequentially, provided that overall cleanup and abatement goals and objectives are not compromised, under the following conditions:

a. Emergency situations involving acute pollution or contamination affecting present uses of waters of the state;

b. Imminent threat of pollution;

c. Protracted investigations resulting in unreasonable delay of cleanup and abatement; or

d. Discharges of limited extent which can be effectively investigated and cleaned up within a short time;

3. Require the discharger to extend the investigation, and cleanup and abatement, to any location affected by the discharge or threatened discharge;

4. Where necessary to protect water quality, name other persons as dischargers, to the extent permitted by law;

5. Require the discharger to submit written workplans for elements and phases of the investigation, and cleanup and abatement, whenever practicable;

6. Review and concur with adequate workplans prior to initiation of investigations, to the extent practicable. The Regional Water Board may give verbal concurrence for investigations to proceed, with written follow-up. An adequate workplan should include or reference, at least, a comprehensive description of proposed investigative, cleanup, and abatement activities, a sampling and analysis plan, a quality assurance project plan, a health and safety plan, and a commitment to implement the workplan;

7. Require the discharger to submit reports on results of all phases of investigations, and cleanup and abatement actions, regardless of degree of oversight by the Regional Water Board;

8. Require the discharger to provide documentation that plans and reports are prepared by professionals qualified to prepare such reports, and that each component of investigative and cleanup and abatement actions is conducted under the direction of appropriately qualified professionals. A statement of qualifications of the responsible lead professionals shall be included in all plans and reports submitted by the discharger;

9. Prescribe cleanup levels which are consistent with appropriate levels set by the Regional Water Board for analogous discharges that involve similar wastes, site characteristics, and water quality considerations;

B. The Regional Water Board may identify investigative and cleanup and abatement activities that the discharger could undertake without Regional Water Board oversight, provided that these investigations and cleanup and abatement activities shall be consistent with the policies and procedures established herein.

III. The Regional Water Board shall implement the following procedures to ensure that dischargers shall have the opportunity to select cost-effective methods for detecting discharges or threatened discharges and methods for cleaning up or abating the effects thereof. The Regional Water Board shall:

A. Concur with any investigative and cleanup and abatement proposal which the discharger demonstrates and the Regional Water Board finds to have a substantial likelihood to achieve compliance, within a reasonable time frame, with cleanup goals and objectives that implement the applicable Water Quality Control Plans and Policies adopted by the State Water Board and Regional Water Boards, and which implement permanent cleanup and abatement solutions which do not require ongoing maintenance, wherever feasible;

B. Consider whether the burden, including costs, of reports required of the discharger during the investigation and cleanup and abatement of a discharge bears a reasonable relationship to the need for the reports and the benefits to be obtained from the reports;

C. Require the discharger to consider the effectiveness, feasibility, and relative costs of applicable alternative methods for investigation, and cleanup and abatement. Such comparison may rely on previous analysis of analogous sites, and shall include supporting rationale for the selected methods;

D. Ensure that the discharger is aware of and considers techniques which provide a cost-effective basis for initial assessment of a discharge.

1. The following techniques may be applicable:

a. Use of available current and historical photographs and site records to focus investigative activities on locations and wastes or materials handled at the site;

b. Soil gas surveys;

c. Shallow geophysical surveys;

d. Remote sensing techniques;

2. The above techniques are in addition to the standard site assessment techniques, which include:

a. Inventory and sampling and analysis of materials or wastes;

b. Sampling and analysis of surface water;

c. Sampling and analysis of sediment and aquatic biota;

d. Sampling and analysis of ground water;

e. Sampling and analysis of soil and soil pore moisture;

f. Hydrogeologic investigation;

E. Ensure that the discharger is aware of and considers the following cleanup and abatement methods or combinations thereof, to the extent that they may be applicable to the discharge or threat thereof:

1. Source removal and/or isolation;

2. In-place treatment of soil or water:

a. Bioremediation;

b. Aeration;

c. Fixation;

3. Excavation or extraction of soil, water, or gas for on-site or off-site treatment by the following techniques:

a. Bioremediation;

b. Thermal destruction;

c. Aeration;

d. Sorption;

e. Precipitation, flocculation, and sedimentation;

f. Filtration;

g. Fixation;

h. Evaporation;

4. Excavation or extraction of soil, water, or gas for appropriate recycling, re-use, or disposal;

F. Require actions for cleanup and abatement to:

1. Conform to the provisions of Resolution No. 68-16 of the State Water Board, and the Water Quality Control Plans of the State and Regional Water Boards, provided that under no circumstances shall these provisions be interpreted to require cleanup and abatement which achieves water quality conditions that are better than background conditions;

2. Implement the provisions of Chapter 15 that are applicable to cleanup and abatement, as follows:

a. If cleanup and abatement involves corrective action at a waste management unit regulated by waste discharge requirements issued under Chapter 15, the Regional Water Board shall implement the provisions of that chapter;

b. If cleanup and abatement involves removal of waste from the immediate place of release and discharge of the waste to land for treatment, storage, or disposal, the Regional Water Board shall regulate the discharge of the waste through waste discharge requirements issued under Chapter 15, provided that the Regional Water Board may waive waste discharge requirements under WC Section 13269 if the waiver is not against the public interest (e.g., if the discharge is for short-term treatment or storage, and if the temporary waste management unit is equipped with features that will ensure full and complete containment of the waste for the treatment or storage period); and

c. If cleanup and abatement involves actions other than removal of the waste, such as containment of waste in soil or ground water by physical or hydrological barriers to migration (natural or engineered), or in-situ treatment (e.g., chemical or thermal fixation, or bioremediation), the Regional Water Board shall apply the applicable provisions of Chapter 15, to the extent that it is technologically and economically feasible to do so; and

3. Implement the applicable provisions of Chapter 16 for investigations and cleanup and abatement of discharges of hazardous substances from underground storage tanks;

G. Ensure that dischargers are required to clean up and abate the effects of discharges in a manner that promotes attainment of either background water quality, or the best water quality which is reasonable if background levels of water quality cannot be restored, considering all demands being made and to be made on those waters and the total values involved, beneficial and detrimental, economic and social, tangible and intangible; in approving any alternative cleanup levels less stringent than background, apply Section 2550.4 of Chapter 15, or, for cleanup and abatement associated with underground storage tanks, apply Section 2725 of Chapter 16, provided that the Regional Water Board considers the conditions set forth in Section 2550.4 of Chapter 15 in setting alternative cleanup levels pursuant to Section 2725 of Chapter 16; any such alternative cleanup level shall:

1. Be consistent with maximum benefit to the people of the state;

2. Not unreasonably affect present and anticipated beneficial use of such water; and

3. Not result in water quality less than that prescribed in the Water Quality Control Plans and Policies adopted by the State and Regional Water Boards; and

H. Consider the designation of containment zones notwithstanding any other provision of this or other policies or regulations which require cleanup to water quality objectives. A containment zone is defined as a specific portion of a water bearing unit where the Regional Water Board finds, pursuant to Section III.H. of this policy, it is unreasonable to remediate to the level that achieves water quality objectives. The discharger is required to take all actions necessary to prevent the migration of pollutants beyond the boundaries of the containment zone in concentrations which exceed water quality objectives. The discharger must verify containment with an approved monitoring program and must provide reasonable mitigation measures to compensate for any significant adverse environmental impacts attributable to the discharge. Examples of sites which may qualify for containment zone designation include, but are not limited to, sites where either strong sorption of pollutants on soils, pollutant entrapment (e.g. dense non-aqueous phase liquids [DNAPLS]), or complex geology due to heterogeneity or fractures indicate that cleanup to applicable water quality objectives cannot reasonably be achieved. In establishing a containment zone, the following procedures, conditions, and restrictions must be met:

1. The Regional Water Board shall determine whether water quality objectives can reasonably be achieved within a reasonable period by considering what is technologically and economically feasible and shall take into account environmental characteristics of the hydrogeologic unit under consideration and the degree of impact of any remaining pollutants pursuant to Section III.H.3. The Regional Water Board shall evaluate information provided by the discharger and any other information available to it:

a. Technological feasibility is determined by assessing available technologies, which have been shown to be effective under similar hydrogeologic conditions in reducing the concentration of the constituents of concern. Bench-scale or pilot-scale studies may be necessary to make this feasibility assessment;

b. Economic feasibility is an objective balancing of the incremental benefit of attaining further reductions in the concentrations of constituents of concern as compared with the incremental cost of achieving those reductions. The evaluation of economic feasibility will include consideration of current, planned, or future land use, social, and economic impacts to the surrounding community including property owners other than the discharger. Economic feasibility, in this Policy, does not refer to the discharger's ability to finance cleanup. Availability of financial resources should be considered in the establishment of reasonable compliance schedules;

c. The Regional Water Board may make determinations of technological or economic infeasibility after a discharger either implements a cleanup program pursuant to III.G. which cannot reasonably attain cleanup objectives, or demonstrates that it is unreasonable to cleanup to water quality objectives, and may make determinations on the basis of projection, modeling, or other analysis of site-specific data without necessarily requiring that remedial measures be first constructed or installed and operated and their performance reviewed over time unless such projection, modeling, or other analysis is insufficient or inadequate to make such determinations;

2. The following conditions shall be met for all containment zone designations:

a. The discharger or a group of dischargers is responsible for submitting an application for designation of a containment zone. Where the application does not have sufficient information for the Regional Water Board to make the requisite findings, the Regional Water Board shall request the discharger(s) to develop and submit the necessary information. Information requirements are listed in the Appendix to this section;

b. Containment and storage vessels that have caused, are causing, or are likely to cause ground water degradation must be removed or repaired, or closed in accordance with applicable regulations. Floating free product must be removed to the extent practicable. If necessary, as determined by the Regional Water Board, to prevent further water degradation, other sources (e.g., soils, nonfloating free product) must be either removed, isolated, or managed. The significance and approach to be taken regarding these sources must be addressed in the management plan developed under H.2.d.;

c. Where reasonable, removal of pollutant mass from ground water within the containment zone may be required, if it will significantly reduce the concentration of pollutants within the containment zone, the volume of the containment zone, or the level of maintenance required for containment. The degree of removal which may be required will be determined by the Regional Water Board in the process of evaluating the proposal for designation of a containment zone. The determination of the extent of mass removal required will include consideration of the incremental cost of mass removal, the incremental benefit of mass removal, and the availability of funds to implement the provisions in the management plan for as long as water quality objectives are exceeded within the containment zone;

d. The discharger or a group of dischargers must propose and agree to implement a management plan to assess, cleanup, abate, manage, monitor, and mitigate the remaining significant human health, water quality, and environmental impacts to the satisfaction of the Regional Water Board. Impacts will be evaluated in accordance with Section III.H.3. The management plan may include management measures, such as land use controls(footnote 1), engineering controls(footnote 2), and agreements with other landowners or agreements with the landlord or lessor where the discharger is a tenant or lessee(footnote 3). The contents of the management plan shall be dependent upon the specific characteristics of the proposed containment zone and must include a

requirement that the Regional Water Board be notified of any transfer of affected property to a new owner(s);

e. The proposed management plan must provide reasonable mitigation measures to substantially lessen or avoid any significant adverse environmental impacts attributable to he discharge. At a minimum, the plan must provide for control of pollutants within the containment zone such that water quality objectives are not exceeded outside the containment zone as a result of the discharge. The plan must also provide, if appropriate, for equivalent alternative water supplies, reimbursement for increased water treatment costs to affected users, and increased costs associated with well modifications. Additional mitigation measures may be proposed by the discharger based on the specific characteristics of the proposed containment zone. Such measures must assist in water quality improvement efforts within the ground water basin and may include participating in regional ground water monitoring, contributing to ground water basin cleanup or management programs, or contributing to research projects which are publicly accessible (i.e., not protected by patents and licenses) and aimed at developing remedial technologies that would be used in the ground water basin. Proposals for off-site cleanup projects may be considered by the Regional Water Board as a mitigation measure under the following criteria:

1. Off-site cleanup projects must be located in the same ground water basin as the proposed containment zone, and

2. Implementation of an off-site project must result in an improvement in the basin's water quality or protect the basin's water quality from pollution, and

3. Off-site projects must include source removal or other elements for which water quality benefits or water quality protection can be easily demonstrated, and

4. Off-site projects may be proposed independently by the discharger or taken from projects identified as acceptable by the Regional Water Board through a clearinghouse process, or

5. In lieu of choosing to finance a specific off-site project, the discharger may contribute moneys to the SWRCB's Cleanup and Abatement Account (Account) or other funding source. Use of such contributions to the Account or other source will be limited to cleanup projects or water quality protection projects for the basin in which the containment zone is designated. Contributions are not to exceed ten percent of the savings in continued active remediation that discharger will accrue over a ten-year period due to designation of a containment zone (less any additional costs of containment zone designation during this period, e.g., additional monitoring requirements, Regional Water Board application costs, etc.). Contributions of less than ten percent must be accompanied by a detailed justification as to why a lesser contribution would provide adequate mitigation.

Except where prohibited by Federal law, Federal agencies may be required, based on specific site conditions, to implement mitigation measures;

f. The proposed management plan must include a detailed description of the proposed monitoring program, including the location and construction of monitoring points, a list of proposed monitoring parameters, a detailed description of sampling protocols, the monitoring frequency, and the reporting requirements and frequency. The monitoring points must be at or as close as reasonable to the boundary of the containment zone so as to clearly demonstrate containment such that water quality objectives outside the containment zone are not violated as the result of the discharge. Specific monitoring points must be defined on a case-by-case basis by determining what is necessary to demonstrate containment, horizontally and vertically. All technical or monitoring program requirements and requirements for access shall be designated pursuant to WC Section 13267. The monitoring program may be modified with the approval of the Regional Water Board s Executive Officer based on an evaluation of monitoring data;

g. The management plan must include a detailed description of the method to be used by the discharger to evaluate monitoring data and a specific protocol for actions to be taken in response to evidence that water quality objectives have been exceeded outside the containment zone as a result of the migration of pollutants from within the containment zone;

3. In order for a containment zone to be designated, it shall be limited in vertical and lateral extent; as protective as reasonably possible of human health and safety and the environment; and should not result in violation of water quality objectives outside the containment zone. The following factors must be considered by the Regional Water Board in making such findings:

a. The size of a containment zone shall be no larger than necessary based on the facts of the individual designation. In no event shall the size of a containment zone or the cumulative effect of containment zones cause a substantial decline in the overall yield, storage, or transport capacity of a ground water basin;

b. Evaluation of potentially significant impacts to water quality, human health, and the environment, shall take into consideration the following, as applicable to the specific factual situation:

1. The physical and chemical characteristics of the discharge, including its potential for migration;

2. The hydrogeological characteristics of the site and surrounding land;

3. The quantity of ground water and surface water and the direction of ground water flow;

4. The proximity and withdrawal rates of ground water users;

5. The patterns of rainfall in the region and the proximity of the site to surface waters;

6. The present and probable future uses of ground water and surface water in the area;

7. The existing quality of ground water and surface water, including other sources of pollution and their cumulative impact on water quality;

8. The potential for health impacts caused by human exposure to waste constituents;

9. The potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents;

10. The persistence and permanence of any potential adverse effects;

11. Exposure to human or other biological receptors from the aggregate of hazardous constituents in the environment;

12. The potential for the pollutants to attenuate or degrade and the nature of the breakdown products; and

13. Potential adverse effects on approved local development plans, including plans approved by redevelopment agencies or the California Coastal Commission.

c. No provision of this Policy shall be interpreted to allow exposure levels of constituents of concern that could have a significant adverse effect on human health or the environment;

d. A containment zone shall not be designated in a critical recharge area. A critical recharge area is an artificial recharge area or an area determined by the Regional Water Board to be a critical recharge area after the consultation process required by Section III.H.9. Further, a containment zone shall not be designated if it would be inconsistent with a local ground water management plan developed pursuant to Part 2.75 of Division 6 of the WC (commencing at Section 10750) or other provisions of law or court order, judgment or decree;

4. After designation, no further action to reduce pollutant levels, beyond that which is specified in the management plan, will be required within a containment zone unless the Regional Water Board finds that the discharger(s) has failed to fully implement the required management plan or that violation of water quality objectives has occurred beyond the containment zone, as a result of migration of chemicals from inside the containment zone. If the required tasks contained in the approved management plan are not implemented, or appropriate access is not granted by the discharger to the Regional Water Board for purposes of compliance inspection, or violation of water quality objectives occurs outside the containment zone and that violation is attributable to the discharge in the containment zone, the Regional Water Board, after 45 days

public notice, shall promptly revoke the zone's containment status and shall take appropriate enforcement action against the discharger;

5. The designation of a containment zone shall be accomplished through the adoption of a cleanup and abatement order as authorized by WC Section 13304. The Regional Water Board shall make a finding of fact with regard to each of the conditions which serve as a prerequisite for containment zone designation in the cleanup and abatement order. All applicable criteria of Section III.H. must be met as a prerequisite to designation. The Regional Water Board may reject an application for designation of a containment zone for failure to meet any applicable criteria without having to make findings with regard to each prerequisite. Such orders shall be adopted by the Regional Water Boards themselves and not issued by the Executive Officers of the Regional Water Boards. These orders shall ensure compliance with all procedures, conditions, and restrictions set forth in Section III.H. As authorized by WC Section 13308, time schedules issued as part of the establishment of a containment zone may prescribe a civil penalty which shall become due if compliance is not achieved in accordance with that time schedule;

6. A containment zone shall be implemented only with the written agreement of all fee interest owners of the parcel(s) of property containing the containment zone. Exceptions may be allowed by the Regional Water Board where opposition is found to be unreasonable. In such cases, the Regional Water Board may use the authority of WC Section 13267 to assure access to property overlying the containment zone;

7. Local agencies which are supervising cleanup under contract with the State Water Board or by agreement with the Regional Water Board pursuant to provisions of the Underground Storage Tank Program may propose containment zones for consideration by the Regional Water Board. The local agency will forward its files and proposal to the Regional Water Board for consideration. Regional Water Boards shall use the same procedures, processes, public notice, and criteria that are noted elsewhere in this policy. Approval of Technical Impracticability Waivers by the Department of Toxic Substances Control or the United States Environmental Protection Agency under the requirements of the Federal Resource Conservation and Recovery Act or the Comprehensive Environmental Response, Compensation, and Liability Act are deemed to be equivalent to the actions outlined in Section H. of this Policy if :

a. the substantive provisions of Sections III.H.2.b., e., f., and g. are met;

b. interested parties described in III.H.8.a. are included in the public participation process; and

c. site information is forwarded from the approving agency to the Regional Water Board so that sites for which Technical Impracticability Waivers have been approved can be included in the master listings described in Section III.H.10.;

8. The Regional Water Board shall comply with the following public participation requirements, in addition to any other legal requirements for notice and public participation, prior to the designation of a containment zone:

a. Public notice of an intention to designate a containment zone shall be provided to all known interested persons, including the owner of the affected property(s), owners and residents of properties adjacent to the containment zone, and agencies identified in Section III.H.9, at least 45 days prior to the proposed designation of a containment zone;

b. Interested persons shall be given the opportunity to review the application, including the proposed management plan, and any other available materials and to comment on any proposed designation of a containment zone. These materials, which contain information upon which the proposed designation of a containment zone is based, must be available for review at least 45 days prior to the proposed designation of a containment zone;

c. The proposed designation of a containment zone shall be placed on the agenda for consideration at a Regional Water Board meeting;

9. At least 45 days prior to the proposed designation of a containment zone, the Regional Water Board shall invite a technical advisory committee to review any proposed designation and shall meet as a committee at the request of any committee member. The committee or any committee member shall provide advice to the Regional Water Board as to the appropriateness of the requested designation and such designation will become part of the public record. No person or agency shall be made a member of the committee who is employed by or has a financial interest with the discharger seeking the designation. The following agencies shall be invited to participate in the advisory committee:

a. The California Department of Toxic Substances Control;

b. The California Department of Health Services, Drinking Water Branch;

c. The California Department of Fish and Game;

d. The local health authority;

e. The local water purveyor, in the event ground water is used or planned to be used as a source of water supply;

f. Any local ground water management agency including an appointed water master;

g. The United States Environmental Protection Agency; and

h. The California Coastal Commission if the site is located within the coastal zone of California.

10. The Regional Water Boards shall keep a master listing of all designated containment zones. The master listing shall describe the location and physical boundaries of the containment zone, the pollutants which exceed applicable water quality objectives, and any land use controls associated with the containment zone designation. The Regional Water Board shall forward the information on the master list to the State Water Board and to the local well permitting agency whenever a new containment zone is designated. The State Water Board will compile the lists from the Regional Water Boards into a comprehensive master list;

11. To assure consistency of application of this Policy, the State Water Board will designate a Containment Zone Review Committee consisting of staff from the State Water Board and each of the Regional Water Boards. This review committee shall meet quarterly for two years and review all designation actions taken. The committee shall review problems and issues and make recommendations for consistency and improved procedures. In any event the State Water Board shall review the containment zone issue not later than five years after the adoption of Section III.H... and periodically thereafter. Such review shall take place in a public proceeding;

12. In the event that a Regional Water Board finds that water quality objectives within the containment zone have been met, after public notice, the Regional Water Board will rescind the designation of the containment zone and issue a closure letter; and

13. The Regional Water Board s cost associated with review of applications for containment zone designation will be recoverable pursuant to Section 13304 of the Water Code, provided a separate source of funding has not been provided by the discharger.

14. Designation of a containment zone shall have no impact on a Regional Water Board s discretion to take appropriate enforcement actions except for the provisions of Section III.H.4.

IV. The Regional Water Board shall determine schedules for investigation, and cleanup and abatement, taking into account the following factors:

A. The degree of threat or impact of the discharge on water quality and beneficial uses;

B. The obligation to achieve timely compliance with cleanup and abatement goals and objectives that implement the applicable Water Quality Control Plans and Policies adopted by the State Water Board and Regional Water Boards;

C. The financial and technical resources available to the discharger; and

D. Minimizing the likelihood of imposing a burden on the people of the state with the expense of cleanup and abatement, where feasible.

V. The State and Regional Water Boards shall develop an expedited technical conflict resolution process so when disagreements occur, a prompt appeal and resolution of the conflict is accomplished.

Appendix to Section III.H.

Application for a Containment Zone Designation

The discharger is responsible for submitting an application for designation of a containment zone. Supporting information which is readily available to the Regional Water Board and which would be cumbersome or costly to reproduce can be included in the application by reference. In order to facilitate the preparation of an acceptable application, the discharger may request that the Regional Water Board provide a preliminary review of a partial application. The partial application should be detailed enough to allow the Regional Water Board to determine if the site passes the threshold criteria for establishment of a containment zone (e.g., it is not reasonable to achieve water quality objectives at that site, plume management measures are likely to be effective, etc.). As appropriate, the application shall include:

a) Background information (location, site history, regulatory history);

b) Site characterization information, including a description of the nature and extent of the discharge. Hydrogeologic characterization must be adequate for making the determinations necessary for a containment zone designation;

c) An inventory of all wells (including abandoned wells and exploratory boreholes) that could affect or be affected by the containment zone;

d) A demonstration that it is not reasonable to achieve water quality objectives;

e) A discussion of completed source removal and identification of any additional sources that will be addressed during implementation of the management plan;

f) A discussion of the extent to which pollutant mass has been reduced in the aquifer and identification of any additional mass removal that will be addressed during implementation of the management plan;

g) If necessary, information related to the availability of funds to implement the provisions of the management plan throughout the expected duration of the containment zone designation;

h) The proposed boundaries for the proposed containment zone pursuant to Section III.H.3.a.;

i) An evaluation of potential impacts to water quality, human health and the environment pursuant to Sections III.H.3.b. and c.;

j) A statement that the discharger believes that the site is not located in a critical recharge area, as required by Section III.H.3.d.;

k) Copies of maps and cross sections that clearly show the boundaries of the proposed containment zone and that show the locations where land use restrictions will apply. Maps must include at least four points of reference near the map corners. Reference points must be identified by latitude and longitude (accurate to within 50 feet), as appropriate for possible inclusion in a geographic information system (GIS) database; and

l) A management plan for review and approval. The management plan must contain provisions for:

1) source removal as appropriate;

2) pollutant mass removal from the aquifer as appropriate;

3) land use or engineering controls necessary to prevent the migration of pollution, including the proper abandonment of any wells within the vicinity of the containment zone that could provide a conduit for pollution migration beyond the containment zone boundary;

4) land use or engineering controls necessary to prevent water quality impacts and risks to human health and the environment;

5) mitigation measures, an implementation schedule for mitigation, and reporting requirements for compliance with mitigation measures;

6) a detailed description of the proposed monitoring program;

7) a detailed description of the method to be used by the discharger to evaluate monitoring data;

8) a specific protocol for actions to be taken if there is evidence that water quality objectives have been exceeded outside the containment zone as a result of the migration of pollutants from within the containment zone;

9) a detailed description of the frequency and content of reports to be submitted to the Regional Water Board;

10) detailed procedures and designs for well maintenance, replacement and decommissioning;

11) a protocol for submittal to and approval by the Executive Officer of minor modifications to the management plan as necessary to optimize monitoring and containment; and

12) a description of file and database maintenance requirements.

CERTIFICATION

The undersigned, Administrative Assistant to the Board, does hereby certify that the foregoing is full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Resources Control Board held on June 18, 1992, and amended at meetings of the State Water Resources Control Board held on April 21, 1994, and October 2, 1996.

/s/

Maureen Marché

Administrative Assistant to the Board

FOOTNOTES:

1. For the purposes of this section, "land use controls" means recorded instruments, proposed by the discharger and agreed to by the owner of the affected property, restructing the present and future uses of the affected property, including, but not limited to, recorded easements, convenants, restrictions or servitudes, or any combination thereof, as appropriate. Land use controls shall run with the land from the date of recordation, shall bind all of the owners of the land, and their heirs, successors, and assignees, and the agents, employees, and lessees of the owners, heirs, successors, and assignees. Such instruments shall provide for (a) amendment or rescission of the restruction upon application of the holder of fee interest in the property and upon the approval of the Regional Water Board if warranted by changed circumstances (e.g., new information demonstrates that a modification to land use restriction is appropriate, the containment zone designation has been rescinded because water quality objectives have been attained throughout the containment zone, etc.), and (b) except for the restriction contained in the instrument, the establishment of a containment zone shall not prohibit the full use of enjoyment of the property.

2. For the purposes of this section, "engineering controls" means measures to prevent migration of pollutants and to prevent, minimize or mitigate environmental damage which may otherwise result from a release of threatened release, including, but not limited to , caps, covers, dikes, trenches, leachate collection systems, treatment systems, and ground water containment systems or procedures and decomissioning of wells.

3. For the purposes of this section, these agreements could be formal, private agreements between parties related to the property use, existing or potential water use, etc.

ADDITIONAL INFORMATION RELATED TO ADOPTION OF CONTAINMENT ZONE POLICY

1. ADDITIONAL PROVISIONS OF RESOLUTION NO. 96-079

State Water Resources Control Board (SWRCB) Resolution No. 96-079, which adopted the Containment Zone Policy Amendment to Resolution No. 92-49, also:

o Directs the Containment Zone Review Committee established pursuant to Section III.H.11. of the amendment to review the implementation of this policy and the incorporation of risk assessment into this policy and provide recommendations to the SWRCB by May 1, 1997, on any further adjustments to the policy.

o Expands the Containment Zone Review Committee to include other public officials and private individuals as determined by the State Board.

2. ANTICIPATED FUTURE MINOR CHANGES TO BE MADE TO CONTAINMENT ZONE PROVISIONS OF RESOLUTION NO. 92-49

On October 2, 1996, the SWRCB adopted Resolution No. 96-079 which amended SWRCB Resolution No. 92-49 to include provisions for a containment zone policy.

Pursuant to Government Code Section 11355, this amendment was submitted to the Office of Administrative Law (OAL) for review and approval. Staff of OAL approved this amendment on January 13, 1997 and brought to our attention two minor matters which need correction. In the first sentence of Section III.H.4., the word "pollutant" should be substitued for the word "chemical". In the second sentence of Section III.H.9. the word "advice" should be substituted for the word "designation".

These minor changes will be corrected the next time Resolution No. 92-49 is revised.

STATE WATER RESOURCES CONTROL BOARD
RESOLUTION NO. 97-085
WATER QUALITY ENFORCEMENT POLICY AND GUIDANCE AMENDMENTS

WHEREAS:

1. The State Water Resources Control Board (State Water Board) adopted a Water Quality Enforcement Policy (Policy) as a State Policy for Water Quality Control on April 18, 1996.

2. An associated Guidance to Implement the Water Quality Enforcement Policy (Guidance) was also adopted on that date. The Policy and associated Guidance were approved by the Office of Administrative Law on August 28, 1996.

3. The Policy is to be periodically reviewed and revised as appropriate.

4. Chapter 5.8 (commencing with section 13399) of Division 7 of the Water Code, which became effective January 1, 1997, provides for an expedited approach for dealing with minor violations of the Porter-Cologne Water Quality Control Act.

5. This new law requires the State Water Board to define what types of violations are minor in nature and therefore subject to this new law.

6. Amendments to the Enforcement Policy are an appropriate means of complying with Water Code Section 13399.

7. A hearing to determine what are minor violations was held on August 6, 1997.

8. It is appropriate to revise the Enforcement Policy and Guidance to define what are minor violations and to describe the new law.

THEREFORE BE IT RESOLVED:

1. The attached revisions to Policy and Guidance are hereby adopted.

2. These revisions shall be incorporated into Enforcement Policy and Guidance.

3. Staff is directed to forward the revisions to the Office of Administrative law for approval in accordance with Government Code Section 11353.

CERTIFICATION

The undersigned, Administrative Assistant to the Board, does hereby certify that the foregoing is a full and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on September 18, 1997.

/s/

Maureen Marché

Administrative Assistant to the Board

Note: The revisions to the Policy and Guidance will be sent for OAL Review
ENFORCEMENT POLICY AMENDMENT: MINOR VIOLATIONS

Whereas (new No. 11)

11. Chapter 5.8 (commencing with Section 13399) of Division 7 of the Water Code establishes a program for minor violations and requires the State Water Board to determine the types of violations that are minor violations.

Resolved (new No. XI)

XI. The violations listed below are considered to be minor in nature provided the violations do not include the following:

• Any knowing, willful, or intentional violation of Division 7 (commencing with Section 13000) of the Water Code.

• Any violation of Division 7 of the Water Code that enables the violator to benefit economically from noncompliance, either by realizing reduced costs or by gaining a competitive advantage.

• Any violation that is a chronic violation or that is committed by a recalcitrant violator.

• Any violation that cannot be corrected within 30 days.

Minor Violations:

A. Inadvertent omissions or deficiencies in recordkeeping that do not prevent an overall compliance determination.

B. Records not physically available at the time of the inspection provided the records do exist and can be produced in a timely manner.

C. Failure to have permits available during an inspection.

D. Inadvertent violations of insignificant administrative provisions that do not involve a discharge of waste or a threat thereof.

E. Violations that result in an insignificant discharge of waste or a threat thereof; provided, however, there is no significant threat to human health, safety, welfare or the environment and provided further that such violations do not violate any other order or prohibition issued by the State or Regional Boards. Significant threat means the threat of or an actual change in water quality that could result in a violation of water quality objectives or a condition of pollution or nuisance.

GUIDANCE DOCUMENT

1. Table of Contents: III.--new C. Notices to Comply

2. Page 8: Actions taken to address past violations include issuance of notices to comply (minor violations), rescission . . . .

3. Page 9 (new)

C. Notices to Comply

Notices to Comply are issued pursuant to chapter 5.8 (commencing with section 13399) of Division 7 of the Water Code. This Chapter provides an expedited approach for dealing with minor violations. Commonly referred to as the "fix-it-ticket" legislation, this law requires the use of field-issued notices to comply as the sole enforcement option in given situations involving minor violations.

Notices to Comply are ordinarily written during the course of an inspection by an authorized representative of the State or Regional Water Board to require a discharger to address minor violations that can be corrected within 30 days. Major features of this law include the following:

- An inspector has the discretion not to issue a notice to comply for a minor violation.
- A notice to comply is not required if there is immediate correction.
- A single notice to comply is used to cite all minor violations detected during the same inspection.
- With exceptions, a notice to comply is the sole means by which an inspector may cite a minor violation.
- If testing is required to determine if there has been a violation, a notice to comply may be issued at a latter date.
- Other enforcement actions may be taken upon a failure to comply or if necessary to prevent harm to public health or the environment.
- Criminal proceedings are not limited by the new law.

- Civil penalties may still be assessed for minor violations if warranted or required by federal law.

The violations listed below are considered to be minor in nature provided the violations do not include the following:

• Any knowing, willful, or intentional violation of Division 7 (commencing with Section 13000) of the Water Code.

• Any violation of Division 7 of the Water Code that enables the violator to benefit economically from noncompliance, either by realizing reduced costs or by gaining a competitive advantage.

• Any violation that is a chronic violation or that is committed by a recalcitrant violator.

• Any violation that cannot be corrected within 30 days.

Minor Violations:

A. Inadvertent omissions or deficiencies in recordkeeping that do not prevent an overall compliance determination.

B. Records not physically available at the time of the inspection provided the records do exist and can be produced in a timely manner.

C. Failure to have permits available during an inspection.

D. Inadvertent violations of insignificant administrative provisions that do not involve a discharge of waste or a threat thereof.

E. Violations that result in an insignificant discharge of waste or a threat thereof; provided, however, there is no significant threat to human health, safety, welfare or the environment and provided further that such violations do not violate any other order or prohibition issued by the State or Regional Boards. Significant threat means the threat of or an actual change in water quality that could result in a violation of water quality objectives or a condition of pollution or nuisance.

D. Cease and Desist Orders